

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

NOV 09 2007

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

TONY SOUNDARA,

Defendant - Appellant.

No. 06-10739

D.C. No. CR-06-00020-1-KJD

MEMORANDUM^{*}

Appeal from the United States District Court
for the District of Nevada
Kent J. Dawson, District Judge, Presiding

Submitted November 6, 2007^{**}
San Francisco, California

Before: KLEINFELD, SILVERMAN, and W. FLETCHER, Circuit Judges.

Tony Soundara appeals the denial of his motion to suppress a firearm found on his person when three police officers approached him in a motel parking lot. He contends that the officers stopped him without reasonable suspicion and that, even

^{*} This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

^{**} This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

if the stop was initially lawful, it escalated into a de facto arrest without probable cause before the officers noticed that he was carrying a gun. We reject both arguments.

The totality of the circumstances leading to the stop of Soundara gave the officers “a particularized and objective basis for suspecting [him] of criminal activity.” *United States v. Morales*, 252 F.3d 1070, 1073 (9th Cir. 2001) (quoting *United States v. Thomas*, 211 F.3d 1186, 1189 (9th Cir. 2000)). Soundara was not merely conversing with the driver of a parked car. He had extended much of his upper body inside the passenger window of an idling car – behavior consistent with the drug and prostitution-related transactions for which the location was known. This gave the officers a particularized suspicion of specific crimes. Such suspicion justifies an investigatory stop even though Soundara’s conduct did not rule out the possibility of innocent conduct. *See United States v. Arvizu*, 534 U.S. 266, 277 (2002).

Nor did the officers’ conduct convert their investigatory stop into a de facto arrest without probable cause. The officers had probable cause to arrest Soundara, a known felon, as soon as they noticed he was carrying a gun. Prior to that point, the officers merely approached Soundara, announced that they were police officers, and demanded that he show them his hands. They did not draw their weapons or

otherwise restrain Soundara. This conduct falls far short of the measures that would have constituted a de facto arrest. *See Washington v. Lambert*, 98 F.3d 1181, 1185 (9th Cir. 1996); *United States v. Buffington*, 815 F.2d 1292, 1300-01 (9th Cir. 1987).

AFFIRMED.